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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Section 304 of the)
Telecommunications Act of 1996)

CS Docket No. 97-80

Commercial Availability of)
Navigation Devices)
_____)

COMMENTS OF AMERITECH NEW MEDIA, INC
ON PETITIONS FOR RECONSIDERATION

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**COMMENTS OF AMERITECH NEW MEDIA, INC.
ON PETITIONS FOR RECONSIDERATION**

Ameritech New Media, Inc. ("Ameritech") respectfully submits these comments in response to issues raised in the petitions for reconsideration of the Commission's Report and Order ("Order") implementing section 629 of the Communications Act, released in the above-referenced proceeding.¹ In the Order, the Commission adopted rules intended to ensure the commercial availability of navigation devices as required by section 629.

I. Introduction and Summary.

Ameritech agrees with several of the petitioners that certain of the rules adopted in the Order are inconsistent with the statutory requirements of section 629, and that the Commission failed adequately to consider the logistical and other problems associated with separating conditional access or security functions from other functions in navigation devices, particularly with respect to analog devices. Specifically, Ameritech supports the petitioners that assert that the "security separation" requirement in the new

¹ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Report and Order*. FCC 98-116 (rel. June 24, 1998).

commercial availability rules should not apply to analog devices. Ameritech also supports the petitioners that contend that MVPDs should not be required to stop selling or leasing devices that combine both security and non-security functions (“integrated devices”) by January 1, 2005. Ameritech further supports petitioners’ requests that, if the Commission does not reconsider the January 1, 2005 phase out date, it should clarify that this security separation deadline will not prevent MVPDs from utilizing integrated set-top boxes through the end of their useful lives. Finally, Ameritech agrees with those who have suggested that the Commission should require that membership in CableLabs be opened up to non-member entities and that all interested parties can participate in the CableLabs standards-setting process.

II. The Commission Should Not Apply Any Separation Requirement to Analog Devices.

Ameritech strongly supports those petitioners seeking reconsideration of the Commission’s decision to require separation of security from non-security functions in commercial navigation devices using analog technology.² NCTA’s and TIA’s petitions vividly demonstrate that, in determining to apply the security separation requirement to analog devices, the Commission failed to explain how the new rules would apply in practice, and to accommodate security concerns in the analog environment.³ The Commission decided to apply the security separation requirement to analog devices despite the near-consensus in the first phase of this proceeding that analog devices should not be subject to the security separation requirement, *inter alia*, because of concerns

² National Cable Television Association Petition for Expedited Reconsideration (filed August 14, 1998) (“NCTA Petition”), Telecommunications Industry Association Petition for Reconsideration (filed August 14, 1998) (“TIA Petition”).

³ NCTA Petition at 5, TIA Petition at 2-5.

about how to preclude effectively signal theft using non-integrated devices.⁴ In so doing, the Commission appears to have concluded that it was constrained to apply the new rules to analog devices on the ground that “Section 629 applies to all types of equipment, including analog, hybrid analog/digital and digital equipment.”⁵

As NCTA correctly observes, however, section 629 is “not an absolute, all-encompassing provision,”⁶ requiring the Commission to apply the same rules to all devices using different technologies in different contexts.⁷ To the contrary, Congress specifically directed the Commission to balance the goal of commercial availability of navigational devices against the interests of multichannel video programming distributors in system security and in preventing theft of service by prohibiting the Commission from prescribing regulations that would jeopardize signal security or impede the legal rights of a provider of multichannel video programming to prevent theft of service.⁸ Thus, not only does section 629 *not* prohibit the Commission from excluding analog devices from the security separation requirement in the new commercial availability rules, it actually mandates such a result to the extent necessary to ensure signal security.

⁴ See, e.g., Comments of Ameritech at 8, Comments of NCTA at 8, TIA Comments at 14, General Instrument Comments at 39, Scientific-Atlanta Comments at 12.

⁵ Order, FCC 98-116 at para. 27.

⁶ NCTA Petition at 8.

⁷ Indeed, the Commission elected to exclude navigation devices used to receive DBS services even where they are incompatible among the various DBS providers. Ameritech is like a DBS provider in this regard. While Ameritech’s navigation device may not function with another cable operator’s system, it can be used on any Ameritech system in any of its markets.

⁸ 47 U.S.C. § 549(b); see also S. Conf. Rep. No. 230 104th Cong., 2d Sess. 181 (1996).

Ameritech agrees with both NCTA and TIA that analog delivery of signals presents significantly greater security risks than digital delivery,⁹ amply justifying the exclusion of analog devices from the new security separation requirement. In addition to the technical and logistical problems associated with separating security from non-security functions already identified by those parties, the Commission failed to consider that, for historical reasons, analog systems, including even newer systems such as those deployed by Ameritech, have relied on hardware solutions to address security issues, while digital systems rely largely on software-based solutions.¹⁰ As a result, analog systems traditionally have had to rely on proprietary hardware technology to protect against assaults on system security or theft of services. Requiring MVPDs to remove the security functionality from navigation devices and place it in a separate component would significantly compromise system security, because the publication of information concerning the interface necessary to enable a non-integrated security device to function would necessarily reveal information about the proprietary technology used to provide security.

In addition, because analog systems rely on hardware security solutions, modifying analog security systems would require the replacement of costly scrambling equipment at each analog cable system's headend, as well as replacement of the descrambling unit in each customer's home. Furthermore, analog systems closely

⁹ NCTA Petition at 4, TIA Petition at 3.

¹⁰ Analog systems rely on hardware solutions because, when they were originally designed, computers were not nearly so robust as they are today. As a result, cable operators could not rely on computers to resolve security issues, but rather had to rely on custom designed hardware. By contrast, digital systems rely on software solutions, taking advantage of significant advances in computing power over the past two decades, and reflecting the need for flexible, upgradable security to thwart increasingly sophisticated attacks on system security.

integrate security with other system functions, employing a particular functionality to provide concurrently both signal security and system control functions in order to reduce costs.¹¹ Separating these combined functions would significantly increase overall system costs, which would likely be passed through to consumers, by forcing systems to deploy additional equipment to provide redundant functionalities.¹²

Because the separation of security from non-security functions in analog navigation devices would significantly undermine system security and impede the ability of system operators to prevent the theft of services, the Commission should, pursuant to section 629(b), exempt analog devices from the separate security module requirement in the new commercial availability rules.

III. The Commission Should Not Require the Phase-Out of Integrated Devices.

Ameritech also supports NCTA's and TIA's request that the Commission reconsider its decision to prohibit cable operators and other MVPDs from selling or leasing new integrated set-top boxes after January 1, 2005.¹³ This prohibition is unnecessary to promote the commercial availability of navigation devices, and directly conflicts with the express language of section 629.

Ameritech agrees with NCTA and TIA that section 629 does not authorize the Commission to prohibit MVPDs from continuing to provide integrated navigation

¹¹ Cable systems frequently use a particular functionality to provide multiple system functions in order to reduce deployment costs. For example, control and data delivery functions are often combined with the conditional access system.

¹² Equipment that cost Ameritech approximately \$1 million per headend to deploy would have to be replaced. The cost of replacing this equipment, however, is unknown because equipment that would accommodate a separate security function for analog systems does not exist currently.

¹³ NCTA Petition at 17, TIA Petition at 5. See also *Order*, FCC 98-116 at para. 69.

devices.¹⁴ As NCTA makes clear, section 629 does not require cable operators to separate security from non-security functions in equipment provided to subscribers; rather, it requires *only* that equipment that does not jeopardize security be made commercially available.¹⁵ Moreover, as Commissioner Powell aptly observes, “the statute squarely commands that ‘[Commission regulations implementing section 629] shall not prohibit any multichannel video programming distributor from also offering converter boxes,’” or other equipment used to access multichannel video programming or other services, provided the system operator’s charges for such devices and equipment are separately stated and not subsidized by charges for any such services.¹⁶ In adopting this limit on the Commission’s authority, Congress plainly was not contemplating “converter boxes” and other equipment with separate security modules, but rather was, as NCTA points out, referring to the same integrated navigational devices then in use by MVPDs.¹⁷ The Commission’s ban on the provision of integrated navigation devices by MVPDs therefore conflicts directly with the statutory proscription against regulations that prohibit MVPDs from offering navigation equipment.

This ban also is inconsistent with the objective of section 629, which simply was to ensure that consumers would be afforded a choice of sources for navigational devices,

¹⁴ *Id.*, NCTA Petition at 18, TIA Petition at 5-7. *See also* Statement of Commissioner Michael K. Powell, Dissenting in Part (“*Powell Dissent*”) (“I see nothing in the statute that requires this result and no persuasive policy reason to interfere with the market in this way.”).

¹⁵ NCTA Petition at 18-19.

¹⁶ *Powell Dissent*.

¹⁷ NCTA Petition at 19.

and not be forced to obtain such equipment from system operators.¹⁸ The ban goes beyond this objective and actually limits consumer choice by preventing consumers from obtaining integrated devices from system operators if they so choose. The Commission's ban on the sale of integrated devices therefore directly conflicts with the express language and legislative history of section 629, and exceeds Commission authority. Accordingly, the Commission should reconsider its decision to ban the provision by MVPDs of integrated devices after January 1, 2005.¹⁹

If, despite the foregoing, the Commission concludes that it has authority to prohibit the provision of integrated navigation devices, which it does not, it should elucidate its decision not to apply the ban to equipment in use or in inventory prior to January 1, 2005.²⁰ Specifically, the Commission should clarify that such equipment may continue to be deployed (or redeployed) until no longer used by the cable operator.²¹

In adopting section 629, Congress admonished the Commission "to avoid actions which could have the effect of freezing or chilling the development of new technologies

¹⁸ S. Conf. Rep. No. 230 at 181 ("One purpose of this section is to help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box . . . or other equipment from the cable system or network operator.").

¹⁹ CEMA's request to accelerate the phase out of integrated devices from January 1, 2005, to July 1, 2000, also would violate the express language of the statute. Accordingly, the Commission should reject CEMA's proposal, which would impose a significant and unwarranted burden on manufacturers and MVPDs. CEMA Petition at 3.

²⁰ *Order*, FCC 98-116 at para. 69. NCTA and the Wireless Communications Association International, Inc. ("WCA") interpret the Commission's decision differently. WCA reads the Commission's order as prohibiting "the sale or lease of integrated boxes purchased prior to [January 1, 2005] which are in inventory on that date or are deployed prior to that date but subsequently returned to inventory." WCA Petition at 4. In contrast, NCTA believes that the Commission's order provides that "boxes placed in service prior to January 1, 2005 may continue to be deployed (or redeployed) by the operator, even if they had been returned to inventory." NCTA Petition at 17-18.

²¹ WCA Petition at 4.

and services.”²² Prohibiting MVPDs from continuing to deploy integrated boxes that are in inventory on January 1, 2005, or that are deployed prior to that date but subsequently returned to inventory due to subscriber churn, would have just such a chilling effect on the development and deployment of new technologies and services using such boxes. That is because MVPDs will have little or no incentive to develop any new features or services that use such boxes, despite the fact that many subscribers are likely to continue to use such boxes after that date, if they cannot continue to deploy any such boxes that remain in inventory.

The prohibition also would impose a disproportionate burden on new entrants, like Ameritech, which must deploy a large numbers of integrated boxes as they continue to add franchises and subscribers. Because non-integrated devices are not currently available, and new entrants’ growth rates, as a percentage of its subscriber base, are increasing at a much faster rate than incumbent operators’, new entrants must continue to purchase and stock integrated devices, even though they may not be able to deploy them if the Commission’s ban goes into effect. Due to their slower growth rates, incumbent MVPDs do not need to purchase large numbers of new integrated set-top boxes, as a percentage of their subscriber base, to satisfy anticipated demand.²³ Rather, they can rely on existing stocks of set-top boxes, and redeployment of boxes returned to inventory when customers terminate service, to satisfy demand from new customers. Incumbents are more likely to have fully depreciated their existing inventory of set-top boxes.

²² Conference Report at 181.

²³ The percent total increase of basic subscribers across the cable industry for 1996 and 1997 were 2.3 percent and 2.0 percent respectively. Cable TV Financial Data Book, Paul Kagan Assoc., Inc. (1997). In contrast, Ameritech increased its subscribership nearly fourfold from 1996 to 1997.

Consequently, incumbents are more likely to have significantly lower stranded equipment costs, as a percentage of overall business costs, than new entrants if the Commission prohibits MVPDs from deploying or redeploying integrated boxes that are in use or inventory on January 1, 2005.²⁴

Accordingly, if it fails to reconsider the phase-out of integrated devices, the Commission should either clarify that the January 1, 2005, security separation deadline will not apply to integrated boxes purchased prior to that date, or carve out a narrow exemption from the deadline for new entrants.²⁵ Such an exemption would be fully consistent with the Commission's decision to exempt DBS equipment from the security separation requirement on the ground that application of the rule to DBS providers could "disrupt an evolving market that is already offering consumers the benefits that derive from competition."²⁶

IV. The Commission Should State That the Standards-Setting Process Must Be Open to Alternative MVPDs.

In its petition, WCA clearly articulates the critical need for alternative MVPDs to be provided a full and fair opportunity to participate in the standards setting process for navigational devices to ensure that any standards developed accommodate their technological needs and that such equipment is fully portable and interoperable among MVPDs. Yet, as WCA points out, several alternative MVPDs have been denied membership in CableLabs, and the opportunity to participate in the standards setting

²⁴ CEMAs proposal to accelerate the phase-out deadline for integrated devices to July 1, 2000, would further burden new entrants, such as Ameritech, by substantially increasing their risk of stranded investment. Indeed, by that date, Ameritech could not even recover the cost of navigation devices it had first deployed in 1996.

²⁵ WCA Comments at 4.

²⁶ *Order*, FCC 98-116 at para. 64.

process, contrary to the Commission's expectation that "entities outside of the membership of CableLabs will be able to participate in the eventual standards setting process."²⁷ Indeed, Ameritech's repeated requests for membership in CableLabs have been rejected.

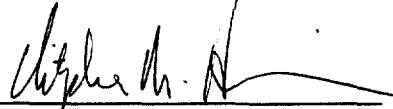
As a result, it is unlikely that the standards adopted through the CableLabs process will accommodate the technological needs of alternative MVPDs, like Ameritech. The lack of access to standards will, moreover, likely retard innovation by new entrants by impeding their ability to design and deploy compatible equipment. Any delay by new entrants in the introduction of innovative products and services will dampen their ability to compete against the very incumbent cable operators establishing the CableLabs standard. Incumbent operators will, therefore, receive a significant head-start in deploying new technologies, which will solidify their control over the local distribution of video programming, contrary to Congressional intent. Accordingly, the Commission should make clear that membership in CableLabs and participation in its standards-setting efforts should be opened to all MVPDs, and that it will not accept any standard established without the participation of any alternative MVPD willing to participate in the process on the same terms and conditions as incumbent operators.

²⁷ WCA Petition at 12; *Order*, FCC 98-116 at para. 14.

V. Conclusion.

For the foregoing reasons, the Commission should grant reconsideration of the *Order* and clarify its new rules in accordance with the recommendations set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher M. Heimann", written over a horizontal line.

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September 23, 1998

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of the Comments of Ameritech New Media, Inc. on Petitions for Reconsideration has been served on the parties attached via courier or UPS next-day mail, on this 23rd day of September 1998.

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